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ABSTRACT

This report analyzes information from 12 Educational Flexibility Partnership Demonstration (EFD) program state reports submitted to the U.S. Department of Education in spring 2000. The EFD program helps schools and districts implement educational reforms and raise student achievement by providing increased flexibility in implementing federal education programs. Twelve state educational agencies (SEAs) were delegated the authority to waive certain federal education requirements that could impede local or state efforts to improve education. The reports summarize 1999 waiver activity (number and type of federal waivers granted to districts or schools and disposition of waiver requests). They include achievement data and other information for waivers that were in place for 2 or more years. This analysis includes information from states' original applications for waiver authority and phone calls to SEA officials. In 1999, more waivers were granted to districts and schools by EFD SEAs than were granted from 1994-2000 to districts and schools in non-Ed-Flex states by the Secretary of Education. The reports do not provide adequate information to describe the effects of waivers on education reform and student achievement. Some questions about the increased accountability demanded of districts and schools receiving waivers remain unanswered. (SM)

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Analysis of the Education Flexibility Partnership Demonstration Program

State Reports

Final Report
February 6, 2001

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I. Introduction

Background of the Education Flexibility Demonstration Act

The Educational Flexibility Partnership Demonstration (EFD) program was first enacted in 1994 as Section 311(e) of the Goals 2000: Educate America Act. The program has two major goals: (1) to help school districts and schools carry out educational reforms; and (2) to raise the achievement levels of all children by providing increased flexibility in the implementation of federal education programs. As participants in the EFD program, twelve state educational agencies (SEAs) were delegated the authority, for a five-year period, to waive certain federal education requirements that could impede local or state efforts to improve education. Initially, the program was authorized to be implemented on a small scale. Six states were selected for the 1994 demonstration program: Kansas, Massachusetts, Ohio, Oregon, Texas, and Vermont. These six states were selected based on population size (three small population states and three large population states). In 1996, legislative changes made to the Goals 2000 program eliminated the population size criterion and led to the designation of six more EFD states: Colorado, Illinois, Iowa, Maryland, Michigan, and New Mexico. States and their local education agencies (LEAs) and schools that are not participating in the EFD program can apply to the U.S. Department of Education for waivers of allowable federal education requirements.

The EFD program is based on the premise that if school districts and schools are given more flexibility to implement federally funded educational programs, then they will be better able to improve education and increase student achievement. The belief in 1994 was that federal program requirements could in some cases limit locally determined efforts to improve education. Increased flexibility would give local educators more control over the design and implementation of their education programs and could lead to increased student achievement. In exchange for this waiver authority, states were required to demonstrate enhanced accountability for the performance of their students, particularly those directly affected by waivers.

The EFD SEAs have broad authority over the types of waivers that they may grant. The federal education requirements that the EFD states can waive include: (1) Title I of Elementary and Secondary Education Act (ESEA), except section 116(a) and (c), as well as the Even Start and the Title I portion of the Comprehensive School Reform Demonstration Program (CSRD); (2) Part B of the Title II of the ESEA; (3) Subpart 2 of Part A of Title III of the ESEA, other than section 3136, the Technology Literacy Challenge Fund Program (TLCF); (4) Title IV of the ESEA; (5) Title VI of the ESEA; (6) Part C of Title VII of the ESEA; and (7) the Carl D. Perkins Vocational and Technical Education Program. The EFD SEAs may also waive certain requirements of General Education Provisions Act (GEPA) and the U.S. Education Department General Administrative Regulations (EDGAR). These requirements may be waived on a statewide basis or at the individual LEA or school level.

Although SEAs may waive these federal education requirements, LEAs and schools must still continue to meet the underlying purpose of each program from which they receive funding. EFD states are also not permitted to waive provisions related to: (1) maintenance of effort; (2) comparability of services; (3) equitable participation of students and professional staff in private schools; (4) parental participation and involvement; (5) the distribution of funds to LEAs; (6) the use of federal funds to supplement, not supplant, non-federal funds; and (7) applicable civil rights requirements.

In addition to the initial population size criterion, eligibility for the EFD program was predicated on states having a Goals 2000 plan that had been approved by peer review, and the authority to waive state education statutory or regulatory requirements. Furthermore, as part of the accountability system for the program, SEAs had to design a waiver review process within their state to monitor and hold accountable those LEAs and schools that had received a waiver. This process was designed to ensure that LEAs and schools with waivers were meeting the academic performance goals established for their students. The EFD states are also required to submit an annual report to the U.S. Department of Education on waiver activity in their states. These reports must discuss any changes in teaching and learning that occurred in the LEAs or schools with waivers in place for two or more years.

In April of 1999, President Clinton signed into law the Education Flexibility Partnership Act of 1999, which extended eligibility in the Ed-Flex program to all fifty states, the District of Columbia, Puerto Rico, and U.S. territories. The 1999 Ed-Flex eligibility requirements differ from those of the 1994 and 1996 Ed-Flex demonstration program, particularly in their connection to the standards, assessment, and accountability requirements outlined in Title I of the 1994 Improving America's Schools Act. The accountability mechanism has also been strengthened in the new legislation. In particular, SEAs are directed to review the annual performance of LEAs or schools granted a waiver and to terminate waivers that the SEA deems (after notice and an opportunity for a hearing) as having failed to meet the "specific, measurable, educational goals" in waiver applications made by LEAs or schools.[1] In addition, annual state reports submitted to the Department are required to include, specifically, "information describing the relationship of the waivers to the performance of schools and students affected by the waivers."[2] The unambiguous references to performance goals appears likely to enhance the accountability demanded of the "new" Ed-Flex states.[3]

Information Used To Write This Report

This report is based on an analysis of information contained in the twelve EFD state reports submitted to the U.S. Department of Education in the spring of 2000. These

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[1] Education Flexibility Partnership Act of 1999, Section 4(a)(4)(D).
[2] Education Flexibility Partnership Act of 1999, Section 4(a)(5)(B)(ii)(III).
[3] The twelve EFD states may apply for an extension of their waiver authority in accordance with the requirements of the 1999 legislation.

reports summarize waiver activity in the states between January 1, 1999, and December 31, 1999, including the number and type of federal waivers granted to school districts or schools and the disposition of waiver requests.[4] As required by the Goals 2000 legislation, the reports also include achievement data and other information for waivers that have been in place in districts and schools for two or more years. In addition, this analysis includes information from the EFD states' original applications for the Ed-Flex authority and information gathered through several phone calls to SEA officials in the EFD states.

II. Summary of Waiver Activity

In total, 1,173 new waivers were granted in 1999 to school districts or schools in EFD states. This represents only a fraction of the total number of districts or schools operating under waivers in EFD states in 1999, as many of the federal waivers granted in previous years were still in effect in 1999. This number is also more than double the total number of waivers granted to districts or schools in non-EFD states from the inception of the waiver authorities in 1994 to 2000.[5] Clearly, districts and schools in EFD states are making much greater use of the waiver authorities than those in non-EFD states.

Table I provides the number of districts that have requested and received waivers by EFD state. In many cases, these districts applied for and were granted waivers on behalf of as few as one or as many as all schools in their districts. Generally, waivers were granted for between one and three years, depending on the state and the type of waiver.[6] For example, most of the Class-Size Reduction program waivers were approved for one year, and many states granted two-year waivers of Title I requirements, although Maryland granted three-year Title I waivers and Massachusetts granted two-year Title I waivers.

A 1998 U.S. Department of Education report shows that Texas has granted more waivers between 1994 and 1997 than any other EFD state (U.S. Department of Education, 1998). (See Table I). Possible explanations for the high degree of waiver activity in Texas include the large number of districts (over 1,100) and schools (over 7,200) in the state. In addition, the state's accountability system has been place for some time, making the waiver accountability process easier to implement, and more familiar to local officials, than in states still undertaking changes in their accountability systems. Ohio, which approved a large number of waivers in 1999 as well, also has a relatively high number of districts (over 600) and schools (over 4,000) as compared to the other EFD states. In addition to Texas and Ohio, three states — Colorado, Michigan, and Massachusetts — also granted relatively large numbers of waivers.

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[4] Typically, the EFD state reports also included data on waivers of state requirements and other summary data for the calendar year 1999.

[5] According to Olson and Raphael (2001), the Department approved 514 of the 946 waiver requests it received from school districts and schools between 1994 and September 30, 2000.

[6] Oregon granted one retroactive five-year waiver, and New Mexico granted one four-year schoolwide waiver.

Table I: Summary of LEAs Requesting & Receiving Waivers in 1999 by EFD State

State	Programmatic Waivers Requested	Programmatic Waivers Approved[a]
Colorado	122	122
Illinois	8	5
Iowa	5	4
Kansas	12	10
Maryland	0	0
Massachusetts	137	135
Michigan	171	171
New Mexico	6	6
Ohio	217	217
Oregon	6	6
Texas	525	490
Vermont	8	7[b]
Total	1217	1173

[a] Depending on the type of the waiver, the approved applicant could be either a district or an individual school. Numbers represented are in terms of districts (LEAs). In the case of statewide waivers, the table indicates the number of districts who utilized a statewide waiver.

[b] Vermont also provided a "blanket" waiver of the Title II subject-area priorities, which was used by an unknown number of districts.

Table I also suggests that few waiver requests were withdrawn or disapproved. The EFD reports reveal that 36 waiver requests were withdrawn or not needed across all EFD states, with the majority of these requests made in Texas. Typically, a waiver request was withdrawn because the circumstances (e.g., poverty level) of an LEA or school had changed, the applicant was mistaken about program requirements, or the applicant learned that the existing law provided sufficient latitude to proceed without a waiver. In some cases, an SEA informed an applicant that its request would not be approved, and the waiver request was withdrawn rather than being disapproved.

In total, only four waiver requests were disapproved by the EFD states. In one case, the district failed to demonstrate adequate need for a broad ESEA waiver. In a second case, a district had applied for a Title I waiver but was ultimately ineligible for Title I. For the two remaining disapprovals, the SEAs deemed that the waiver requests represented inappropriate uses of federal program funds.

Table II, which provides information on whether waivers were granted to school districts and/or schools on an individual or a statewide basis, reveals that the large number of waivers approved in these five states were granted on a statewide basis. This authority, although not spelled out in the Goals 2000 legislation authorizing the EFD program, is permitted for seven of the twelve EFD states under the Ed-Flex authority.[7] Six of these

[7] Texas, Ohio, Colorado, Michigan, Maryland, New Mexico, and Vermont have the authority to grant waivers on a statewide basis. The remaining five EFD states are able to grant waivers only to individual districts and/or schools.

seven states "pre-approve" statewide waivers for districts that wish to use them. In these states, school districts need only show their intent to take advantage of the waiver on program applications submitted to these states. Texas, however, requires that individual school districts and schools apply for programmatic waivers that have been granted on a statewide basis. According to the SEA's EFD report, this application is required in order "to ensure that school district personnel are aware of the requirements for increased accountability in exchange for increased flexibility."

Table II: Summary of LEAs Receiving Waivers in 1999 by Type and EFD State

State	Individual Waivers Approved	Statewide Waivers Approved
Colorado	4	118
Illinois	5	0
Iowa	4	0
Kansas	10	0
Maryland	0	0
Massachusetts	27	108
Michigan	0	171
New Mexico	1	5
Ohio	0	217
Oregon	6	0
Texas	4	486
Vermont	7	Unknown[c]
Total	68	1105

[c] The number of statewide waivers approved for Vermont is unknown due to the use of "blanket" waiver which does not require an LEA or school to apply directly to the SEA for a waiver.

The lack of specified goals for statewide waivers, discussed further in the next section, presents a potential lack of accountability for these waivers. The Goals 2000 legislation that authorized the EFD program specifically states that an SEA shall not approve an individual district or school application unless the waiver "will assist the local educational agency or school in reaching its educational goals" (Section 311(e)(5)(A)(iv)). Pre-approval of statewide waivers, rather than having school districts and schools apply formally for a waiver, circumvents this specific requirement.

The use of the statewide waiver appears to encourage more districts and/or schools to take advantage of waivers. This may be due to greater awareness of this waiver option among districts and schools, and perhaps to the lack of a need to apply formally for statewide waivers (with Texas as the exception). An SEA official in Ohio also confirmed that, at least in this state, waivers that were made available on a statewide basis had been requested frequently in the past by individual districts and/or schools, suggesting that greater flexibility regarding these requirements was in demand.

Across the twelve EFD states, only 68 waivers, out of the total 1,173, were granted on an individual basis. Massachusetts granted 27 individual waivers, significantly more than Kansas' 10 and other states with fewer individual approvals.[8]

Table III shows waivers granted by provision and state. The greatest number of waivers granted in EFD states — approximately 55 percent of the total number of waivers granted in 1999 — relate to various requirements of Title VI, the Class-Size Reduction (CSR) program, established as part of the Department's FY 1999 appropriations bill. Due to changes in the 1999 CSR program enacted through the passage of the FY2000 appropriations act, many of these waivers are no longer needed.[9]

Table III: Summary of LEAs Receiving Waivers in 1999 by Provision and EFD State

State	Title I		Title II			Title VI[d]	Other[e]
	Schoolwide Eligibility	*Targeting*	*Subject Priorities*	*Cost Share*	*Consortium Requirement*		
Colorado	9	0	1	8	14	90	0
Illinois	2	3	0	0	0	0	0
Iowa	4	0	0	0	0	0	0
Kansas	9	0	1	0	0	0	0
Maryland	0	0	0	0	0	0	0
Massachusetts	2	6	0	0	0	127	0
Michigan	28	0	0	0	0	143	0
New Mexico	1	5	0	0	0	0	0
Ohio	122	0	95	0	0	0	0
Oregon	0	0	0	0	0	5	1
Texas	109	23	37	40	0	277	4
Vermont	6	0	Unknown	0	0	1	0
Total	292	37	134	48	14	643	5

[d] This category includes a variety of Title VI waivers including (1) Class Size – Early Grades; (2) Class Size – Consortium; (3) Class Size Reduction – Increasing the target class size from 18 to 20; (4) Class Size Reduction – Allowing funds to be expended to provide salaries/benefits to teachers already employed by LEA; (5) Class Size Reduction – Eliminating the 15% maximum for professional development; (6) Class Size Reduction – Redefining early elementary grades to include kindergarten; (7) Title VI, Part D – Section 307 (c)(1) and (2)(a), Section (c)(1), Section (c)(1) and (2)(a); and (8) Class Size Reduction Act provisions regarding the funding of kindergarten programs.

[e] The "Other" category includes Title I – 125% Rule; Title I – Campus Eligibility; and Improving America's Schools Act (IASA) 1116(d).

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[8] Nineteen of Massachusetts' 27 individual waivers were Class-Size Reduction (CSR) program waivers to allow districts to hire teachers in grades other than 1 through 3. (Massachusetts' other eight individual waivers were of Title I schoolwide program or campus allocation requirements.) Massachusetts also used the statewide waiver option for the consortium requirement of CSR, as did other states granting high numbers of CSR waivers.

[9] The new CSR program now encompasses reducing class size in grades kindergarten through three and no longer requires districts whose allocation was less than the starting salary of a new teacher to form a consortium in order to train teachers. States that had state or local class-size reduction goals of 20 or fewer students prior to the 2000 Act can substitute that goal for the federal target of 18 students.

The next largest group of waivers, comprising 28 percent of the total, apply to requirements of Title I and, in particular, to the minimum poverty threshold (50 percent) for implementing a schoolwide Title I program. Both Ohio and Texas — which in combination comprise 79 percent of the total number of schoolwide waivers granted by EFD states — provided these waivers on a statewide basis. An SEA official from Ohio explained that the state promotes the use of the statewide schoolwide waiver to ensure that all Title I-eligible students are served, particularly because of high levels of student mobility between urban and suburban districts in that state. In general, there is no need to worry about the mobility issue because once a school has become a schoolwide program, its poverty level can fall below fifty percent without losing its schoolwide status. It will remain a schoolwide program if it continues to meet the basic Title I eligibility requirements and funding is available.

Most EFD states granted these waivers to schools with between 35 and 49 percent poverty levels, although in at least one state, schools with under 20 percent poverty, and even under 10 percent, were granted such waivers. Approval of schoolwide waivers for schools with poverty levels below 35 percent can be permitted if the district in which the school resides has a low poverty level, and the school's poverty level is above that districtwide average.[10]

Title II waivers represented the third largest percentage of waivers granted in EFD states. These waivers allowed districts to apply some portion of funds toward professional development in subjects other than mathematics and science. Again, both Ohio and Texas, as well as Vermont, provided this option to districts on a statewide waiver. In most cases, districts wished to use a portion of the Title II funds for language arts and/or social studies programs, although in one case a district used all of its Title II funding on a reading program.

The scope of waivers granted since 1995 in non-Ed-Flex states resembles that of waivers granted in EFD states in 1999. In non-Ed-Flex states, waivers of Title I requirements comprise the greatest number of waivers granted since 1995, although the within-LEA targeting waivers comprised the greatest percentage and the minimum poverty threshold for schoolwide programs the next greatest portion.[11] A variety of "other" waivers constitute the next most frequently granted waiver, followed closely by waivers for the CSR program and waivers of the standards deadline incorporated into the ESEA.

In conclusion, waiver activity among the EFD states has focused on similar types of waivers as those granted to non-Ed-Flex states by the U.S. Secretary of Education, although on a much larger scale. EFD states varied considerably in the number of waivers

[10] Similarly, in limited instances, a waiver may be granted to permit a district to serve a school that is otherwise ineligible for Title I services. However, in the new 1999 Ed-Flex program, such a waiver may be granted *only if* the poverty rate for this school is within 10 percentage points of the lowest eligible Title I school. (Section 4(c)(1)(G)).

[11] In fiscal year 2000, the schoolwide waivers were the most commonly granted waivers in non-Ed-Flex states, however. See Olson and Raphael (2001).

granted in 1999, with Texas granting more waivers than the other EFD states. Most waivers were granted on a statewide basis.

III. Tracking and Accountability Mechanisms

Federal Requirements for State Reporting

As described in the Goals 2000 legislation that authorized the EFD program, EFD states are required to report annually to the U.S. Secretary of Education on waiver activity in their states and on results achieved by school districts and schools operating under waivers for two or more years. However, the description of these reporting requirements includes certain inconsistencies which may account for some of the variation in EFD state practices regarding tracking and accountability for waivers granted.

The Goals 2000 legislation that authorizes the EFD program indicates that each LEA or school requesting a waiver from the SEA must "describe for each school year *specific, measurable educational goals* for each local educational agency or school affected by the proposed waiver" (emphasis added) (subsection 311(3)(5)(A)(iii)). The legislation also requires all SEAs that receive funds under Title I to report annually on progress "in meeting local goals and plans and increasing student learning," suggesting that student achievement results be reported (subsection 312(a)(3)). Yet, in a subsection specifically devoted to accountability regarding the progress of states, districts, and schools using waivers, the legislation indicates that the Secretary shall review achievement of the "*purposes and overall expected results*" (emphasis added) described in the application "pursuant to subsection (a)(2)(B)(iii) or (e)(5)(A)(ii) have been achieved."[12] The subsection referenced — (e)(5)(A)(ii), for Ed-Flex — is distinct from the next subsection in the legislation — (e)(5)(A)(iii) — which discusses the "specific, measurable, educational goals" that are required for district and school applications. This ambiguity may encourage SEAs to report a variety of information to support achievement of "purposes and overall expected results," including discussion of the provision of "better" instruction, anecdotal information, and broad data such as increased attendance rather than data to support achievement of the specific educational goals required in the waiver applications.

The reporting guidance sent to the EFD states by the Department is not ambiguous. The guidance spells out reporting requirements and is intended to establish a method for ensuring accountability from districts and schools operating under waivers for two or more years. According to the guidance, the reports should describe progress made by districts and schools in meeting *specific educational achievement goals*. Furthermore, to the extent possible, these goals should be linked to the states' assessment systems and the data should be disaggregated by race/ethnicity, socioeconomic status, gender, and other factors. In addition, the guidance requests that states report on "the recipient's educational achievement goals and the benchmarks and timelines used to indicate progress toward its

[12] Goals 2000, 311(f).

goals." The guidance also indicates that the Department expects these goals to be linked to final state assessments that are aligned to state standards, or to transitional assessments.

Although the reporting guidance is quite clear, EFD states may be responding to inconsistencies in the Goals 2000 legislation explained above.

Goal-setting for New Waivers[13]

The guidance on EFD state reporting provided by the Department asks SEAs to identify goals, benchmarks, timelines, and measures that will be used to assess the progress made by districts and schools that have received new waivers in 1999. Our review of the EFD reports on new waivers granted in 1999 reveals a wide variety of responses to this requirement. Generally, we conclude that the EFD states failed to follow the format suggested by the federal guidance.

In six state reports, eight different types of waiver were granted for which these states provided no specific goals, benchmarks, or timelines for any waiver recipients. In four of these cases, the waivers had been granted on a statewide basis. EFD states may have felt that waivers granted on a statewide basis applied automatically to any district or school that wanted the waiver, and thus did not require consideration of specific goals for the waiver. However, the lack of connection to the specific local context and needs, as well as any benchmark or timeline, makes it unclear how the EFD states will assess progress made with these statewide waivers.

The establishment of specific goals for statewide waiver recipients is an important issue because, as discussed earlier, the most frequently approved waivers were granted on a statewide basis. An SEA official in one such EFD state explained that although the SEA does not require districts taking advantage of statewide waivers to identify unique educational goals tied to the waiver, the SEA monitors their progress by checking student achievement results from the state assessment against the plans and goals contained in these districts' continuous improvement plans. The results of such a check are not included in the state's report, however. In fact, Texas is the only state that provided specific goals for its statewide waiver recipients.

More significantly, when EFD states did provide goals for new waivers — individual or statewide — in almost all cases these were not specific. The goals ranged from the extremely broad (e.g., improved teaching and learning, the improvement of educational programs using instructional strategies that will raise academic achievement for all students), to the only slightly less vague (e.g., all students reading by third grade, annual decreases in the number of students needing improvement in a subject). A specific goal would include a time frame and a specific academic target. For example, "As a result of the waiver, the school expects that 70 percent of the third and fifth grade students will

[13] Note that this subsection describes goal-setting for *new* waivers granted in 1999, as described in EFD reports. The next subsection summarizes the methods for ensuring accountability for waivers that have been in place for two or more years, as required by the Goals 2000 legislation that authorized the EFD program.

score at the satisfactory level in reading and mathematics on the state test by the close of the 1999-2000 school year." Our findings are supported by the 1998 GAO report on Ed-Flex, which states: "Wide variation exists among Ed-Flex states regarding whether they have established clearly defined goals to measure the results of waivers received by districts and schools. Some states and districts have expressed their goals only in the vaguest of terms, while others have been more precise."[14]

All of the EFD states were more thorough in identifying the assessments and other measures that would be used to determine the progress of districts and schools with waivers. All of the EFD states, in fact, indicated that state assessment results would be used. Four states — Kansas, Maryland, Massachusetts, and Illinois — also utilize additional measures, including local criterion-referenced tests and/or standardized norm-referenced tests (e.g., the Iowa Test of Basic Skills).

In most EFD state reports, the goals proposed for waiver recipients were uneven in specificity and rigor. Massachusetts is a case in point. Although the progress of Massachusetts school districts with waivers is measured using the state accountability system's school performance and improvement ratings (based on results of the state assessment), school districts also proposed using a variety of additional indicators to measure their progress, some of questionable quality. For example, one district indicated that it would compare grade-3 reading comprehension results from the 1998-1999 Iowa Test of Basic Skills to grade-4 results on the 1999-2000 state assessment. It is unclear how this could be accomplished. Other Massachusetts districts proposed to compare student achievement between classes affected by a class-size waiver and larger classes. However, no specific benchmark or target for student achievement was used, so it is possible that very small differences in achievement would be provided to support the claim that the class-size waivers were effective. Although many of these Massachusetts districts proposed to use specific achievement measures, the lack of clearly specified academic goals diluted the strength of these approaches.

Measuring Progress Under Waivers

Eleven of the twelve EFD states included in their reports academic achievement data for districts or schools operating under Ed-Flex waivers for two or more years.[15] Most of these districts and schools had received Title I schoolwide or targeting waivers, and four states — Kansas, Michigan, Ohio, and Texas — also reported achievement data for Title II waivers.

In reporting academic achievement data to ED by school districts and schools with waivers, most EFD states reveal the manner in which federal programs were implemented using waivers, and the academic progress of students affected by waivers. Such a report more closely resembles performance measurement — in which data suggest the "trend" in progress but do not attribute causality to a particular program or practice — than

[14] GAO (1998), p. 15.

[15] New Mexico had no such districts or schools in 1999.

evaluation. In providing information about academic progress, the EFD states had to make decisions about how to present the achievement data most usefully. The state reports varied greatly, in terms of content and format. Despite fulfilling most of the reporting requirements of achievement data, most EFD states presented data in a manner that did not fully satisfy the intent of the accountability provisions in federal legislation and guidance, which is to assess the progress of districts and schools with waivers in achieving their specified educational goals. The lack of analysis of results in many of the reports suggests that many EFD states approached the requirement as merely reporting, rather than assessing, progress achieved.

To ensure that the reported data constitute meaningful accountability measures, certain well-regarded practices are discussed in the Government Performance Results Act of 1993 (P.L.103-62), including goal-setting, measuring program performance against goals, and analyzing and explaining the reported results. Similarly, we summarize below the presence or absence of key components in an effective accountability framework, including four major categories of information that are useful in EFD reports: (1) background information; (2) basic accountability information; (3) additional explanatory information; and (4) an analysis of the reported results. Our proposed framework also incorporates relevant standards of evaluation practice, such as the identification of contextual and background information and the purposes and procedures of the evaluation object (Joint Committee on Standards for Educational Evaluation, 1994). Finally, sound program monitoring practices are relevant to state reporting activities (Rossi and Freeman, 1993).

Background information

Background information about the waiver is needed to provide a context for the accountability data. The following identifications are helpful: (1) the waiver recipient (i.e., school or district); (2) the school years affected by the waiver; (3) the statutory provisions for which waiver was sought; and (4) a description of recipient's goals for the waiver. This background information provides a framework for examining the progress made toward achieving goals. Several states did not provide much of this information. Maryland and Texas were the only EFD states to provide goals for all of the districts or schools required to report achievement data, and Illinois and Iowa provided goals for some but not all of their waiver recipients.

Basic accountability information

The most basic component of the EFD state reports are the achievement data used to assess the progress of waiver recipients. As mentioned, each of the eleven EFD states used state assessment data as the basis of their report, with Illinois, Maryland, and Kansas also including norm-referenced standardized tests in some cases (e.g., CTBS).[16] Student

[16] In addition, one district in Maryland reported local criterion-referenced test results. Iowa and Michigan presented their results in terms of whether districts or schools with waivers achieved "adequate yearly

achievement data were reported in different formats. Massachusetts was the only state to include actual test scores, while most of the other states presented their achievement data in some form that involved percentages of students meeting or surpassing various proficiency levels. For example, Illinois provided the percentage of students in affected schools at Level 1, Level 2, Level 3, and Level 4, while Kansas listed the percentage of items answered correctly on the state assessment for participating schools. Despite variations in their data source and format, the EFD states as a whole were careful to use achievement data as a basis for measuring progress during the waiver period.

Certain reporting components help to demonstrate progress against both the goals for the individual waiver and the federal program to which the waiver applies. Achievement data is best reported: (1) by individual waiver recipient, with the appropriate unit of analysis; (2) for each year to which the waiver applies, including baseline data; (3) against the specific goals identified for the waiver recipient; and (4) against the goals of the federal programs affected by the waiver. Each of these is discussed below.

By individual waiver recipient. To ensure individual accountability, the report should provide performance data for the individual waiver recipient, such as by school for waivers of the schoolwide poverty threshold and by district for waivers of Title I targeting provisions or Title II subject area. Most EFD states reported academic performance by individual waiver recipient in their reports, using the correct unit of analysis in their reports. Two states, however, failed to provide precise, individual waiver recipient progress measures in several cases. For its Title I schoolwide waiver recipients, Ohio reported proficiency passage rates for the cohort of schools and compared these with all schools with schoolwide programs, all Title I schools, and all schools. Although these comparisons are useful, the aggregation of data across schools obscures whether the reported academic gains occurred in <u>each</u> school with a waiver. Ohio also provided aggregated school district results for its Title II waiver recipients rather than individual district results. Similarly, Texas did not report individual school or district achievement data. Ohio and Texas may have aggregated their achievement data to avoid having to provide individual data on the large number of schools and districts with waivers. Ohio approved 186 Title I schoolwide waivers and 232 Title II waivers. Texas' numbers are as great or greater. Admittedly, the inclusion of these data would have lengthened the state reports. However, individual waiver recipient results are needed to isolate the effects of waivers and to ensure accountability for individual waiver recipients.

For each year the waiver applies. The ED guidance also indicates that achievement data should be reported for all of the years that data are available and relevant to the waiver, as well as baseline data. Technically, baseline data is achievement data from the year before the waiver was granted. However, most states only reported achievement data starting with the year of the report, when the waivers had been in place for between one and two years. Furthermore, despite the example reporting practices included with the guidance

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progress" (AYP), a measure of continuous yearly progress that must be established by states that receive Title I funding.

sent to EFD states, only three of the states (Maryland, Michigan, and Ohio) provided any achievement data from the period prior to award of the waiver.

Against the goals identified for the waiver recipient. The achievement data in the EFD reports should correspond to the goals identified by the SEA for waiver recipients. As mentioned above, many EFD states did not include the goals for waiver recipients in their discussion of student achievement. Thus it is possible that any improvement can be reported, which does not conform with good practice for assessing the benefits of a waiver. Although educational goals may have been established by the SEAs initially for waiver recipients, the failure to tie performance to these specific goals when reporting results suggests that the accountability "loop" may be broken, i.e., states may not be reviewing these goals at the same time that they are reviewing and reporting achievement data to the Department. Furthermore, the SEAs and the Department cannot monitor progress achieved under waivers if this loop has been broken. Another problem, also discussed earlier in regard to new waivers granted in 1999, is that the goals described along with the achievement data were often vague.

Against the goals of the affected federal programs. At the same time, to ensure accountability for the goals of the federal program to which the waivers apply, achievement data should be tied to the program target areas and intended beneficiaries. For example, because the Title II subject area waivers allow districts to use funds for subjects other than science or mathematics, student achievement data should be reported in science and/or mathematics to ensure that student achievement in these target areas has not suffered through the use of the waiver. Not all states accomplished this. Kansas, for example, reported on reading scores for students in its districts with Title II waivers, as it used the Title II funds for a reading program. Although these scores showed positive gains, such reporting does not support the original intent of the Title II program. In contrast, a district in Michigan used half of its Title II funds for a language arts/social studies program and provided student achievement data in reading, writing, science, and mathematics — a more appropriate approach.

The need to ensure accountability for the purposes of the federal program applies particularly to Title I waivers. Because Title I is targeted to students most at-risk for academic failure, it is important that states monitor whether this particular sub-group of students is achieving the goals set forth for the waiver recipient. Particularly in the case of Title I schoolwide poverty threshold waivers, it is important to disaggregate student achievement results by categories such as socioeconomic and disability status and limited-English proficiency — a practice required for school, district, and state reporting under Title I (although disaggregated data is not required to be used in adequate yearly progress formulas). If progress in participating schools is not disaggregated, then although a school's average test score gains may be significant, we do not know whether the students most at risk of academic failure — the intended beneficiaries of the Title I program — have made similar progress while the waiver was in place. Disaggregating student achievement data by demographic characteristics helps to show whether the goals identified for the waiver are met while also honoring the goals of the federal programs

affected by the waiver. However, only Texas used the performance of student sub-groups for all of its achievement data. Kansas and Maryland also disaggregated student achievement data, although not consistently.[17]

The failure to use disaggregated test score results obscures an important issue regarding waivers. The federal government is responsible for ensuring that the intent of the affected federal programs is achieved with waivers granted by the EFD states. Schoolwide Title I waivers play an even more important role here because of the ability to combine Title I funds with funds from many Secretary-administered federal education program.[18] The only required accounting for these combined program funds is to ensure that they are used to meet the intent and purposes of the affected programs. Thus, having a schoolwide program gives the school access to more funding and less accountability for those funds. This issue is discussed in greater detail in the conclusion.

Additional explanatory information

States should also consider providing additional explanatory information with the achievement data in order to aid the assessment of whether waivers have been useful. Such information — and good practice in assessing performance — includes the use of: (1) comparisons; (2) standard errors and confidence intervals; and (3) non-test score data. Comparisons between the performance of schools or districts that receive waivers and those that do not help to provide a context for a discussion of progress made by waiver recipients. One might be satisfied to learn that waiver recipients have witnessed improving test scores, but if these gains are low in comparison to non-waiver recipients, then the waiver may be having a negative effect.

Roughly half of the EFD states provided some comparisons of performance between waiver recipients and non-recipients, yet the types of comparison varied considerably. Texas compared waiver recipients to the state average. Illinois used state and district averages in its comparisons, and Colorado broke down its comparison to all elementary schools, all Title I schools, all schoolwide schools, and all targeted assistance schools. Generally, these states used appropriate comparison groups, varying these groups depending on the type of waiver being discussed. Although all such comparisons are useful, comparisons with average state results are less meaningful than those with other schools. Comparisons are also more useful when made with raw test scores or percentages than if the state reports that schools or districts simply made "adequate yearly progress" (AYP).

Achievement data can be more helpful if detailed scales and definitions, as well as standard errors and confidence intervals, are contained in the report. Detailed scales and

[17] Of the eleven districts in Maryland that were required to supply student achievement data, only one was discussed in terms of results of student subgroups (gender, minority, and LEP status), but no numbers were provided. In Kansas, data for two out of seven districts was disaggregated by gender and socioeconomic status using percentages.

[18] Certain federal funds cannot be combined with Title I funds.

definitions are key to understanding any reporting of achievement data. For instance, Massachusetts reports a scale of 200-280 for their test scores, but they do not provide any information on gradations within the scale and are thus not particularly helpful for interpreting scores. Oregon reported achievement data in terms of the percentage of students not meeting, meeting, or exceeding state standards, but did not provide information about the progress of schools in general (a comparison), nor any sense of scale, i.e., how much of a gain is significant. Thus, learning that the percentage of students who met the standards increased by 10 percent is reading is not very meaningful. Additionally, we do not know what it means to be "not meeting" or "meeting" or "exceeding" state standards. It would be helpful to know that "not meeting" is defined as a student scored less than 50 percent on the state test while "exceeding" is defined as 70 percent or above. The presence of scales and definitions helps to contextualize the achievement data and provide a sense of the statistical significance of the results.

Similarly, standard errors and confidence intervals enhance the credibility of reported achievement data. Standard errors are important for understanding the variability of the reported test data. High standard errors suggest great variability in the data. Confidence intervals at a certain percentage level (90 or 95 percent) provide the range based on the standard error. For example, a state might report the percentage passing a test as 65, but the confidence interval could suggest the percent could range from 55 to 75. If a defined proficiency level (e.g., "acceptable) is 65, this school could potentially not pass when the confidence interval is taken into account. None of the EFD states provided standard errors and/or confidence intervals with their achievement data. Vermont made an attempt to report their data in terms of confidence bands, as well as using comparison schools, but the SEA did not provide actual test scores, which introduced some technical measurement problems.[19]

Non-test score data should be included in the ideal report as supporting material to clear up any remaining questions around the achievement data. If reading scores are improving, but still lagging behind non-waiver schools, it might be helpful to know the percentage of limited-English proficient students in the school. Non-test score data can take many forms including percent receiving free- and reduced-price lunch, the percent low income, the percent with limited-English proficiency, and attendance, mobility, and racial-ethnic breakdowns for students. In addition, some waiver recipients may wish to report additional non-test score data as evidence of progress made under waivers. For example, certain Title I programs seek to improve parent participation, so reporting parent participation rates in a school, as done in Illinois, potentially demonstrates progress that has occurred with a waiver.

Analysis of results

The final key information needed in an accountability report is a discussion of the significance of the student achievement results presented in the state report. Although it

[19] The bands indicate only that certain schools overlapped in their scores. Schools could be within the same band but on opposite ends of the spectrum.

may appear sufficient to simply state whether waiver recipients achieved their specific goals, as discussed above, the EFD program implicitly requires SEAs to evaluate the progress made by districts and schools with waivers, and to report the results of such an assessment to the federal government. Instead of simply reporting test scores in their documents, EFD states are expected to monitor district and school waiver activity and reflect on the state's use of the Ed-Flex authority. The SEA may ask specific questions about waiver use, such as whether students in schools with waivers are performing as well as students in schools without waivers. It may describe how waivers promoted or hindered innovation, and identify technical assistance activities undertaken by the SEA at schools that failed to achieve their educational goals. Such an assessment can be complex; at the very minimum, it should describe the conclusions reached by the SEA about the use of waivers in the state.

Significantly, EFD states had a tendency to provide either no analysis, or to provide a fair to poor analysis. Massachusetts, Michigan, and Ohio did not analyze their achievement data at all, while Kansas and Illinois lacked analysis for several grantees. Iowa and Oregon provided some analysis, but it was of very poor quality. In some cases, the EFD states may have felt they had nothing to discuss: Massachusetts' report indicates that "increases in these scaled score points is an indication of student improvement." However, as we have suggested, simply reporting increases in scores — without comparisons, standard errors, or a discussion of extenuating factors — can be less than helpful. Several Maryland districts, for example, established a goal of 70 percent of their students in specified grades scoring at the satisfactory level on the state assessment in specified subjects. When student achievement results were discussed, and most of these districts had <u>not</u> attained this goal, no discussion or analysis ensued. Vermont, Colorado, and Texas discussed consequences for waiver recipients not making progress, an important aspect of the exemplary discussions of progress made under waivers (see next section).

IV. Evidence that Ed-Flex Has Promoted Educational Reform

The EFD state reports and the applications for Ed-Flex authority submitted by these states to the U.S. Department of Education between 1995 and 1997 suggest that Ed-Flex has the potential to promote educational reform. In particular, the SEAs stress the value of waiving federal requirements in order to encourage local innovative and a better match between local needs and programs funded with federal money. Unfortunately, however, as the reports are currently structured, in most cases we cannot quantify or confirm such claims.

In their applications and EFD reports, SEAs indicated that the elimination of regulatory "barriers" and the provision of greater local control over the planning and implementation of programs would contribute to local reform. EFD states make the claim that the increased flexibility will help local educators think more expansively about education reform. In its 1995 application for Ed-Flex status, Vermont indicated that it was in the process of reviewing state laws and regulations in order to limit these and better support

increased student performance and educational equity. The SEA viewed federal Ed-Flex authority as a "natural extension" of this process — and as an opportunity to encourage local program officers and directors to think "outside the box" about reform using state and federal funds. The "removal of regulatory barriers" to local reform was also cited in Ohio's report as key to the state's efforts to enhance continuous improvement and encourage districts and schools to implement activities that form part of the districts' and/or schools' improvement plans.

Yet few waivers approved in the EFD states involve more than fairly minor changes or extensions of specific requirements of Title I, Title II, and the CSR program. One could infer, of course, that symbolically, the Ed-Flex authority has helped SEAs provide their school districts and schools with greater local control, whether or not large numbers of waivers have been granted in these states. But this does not qualify as evidence.

Another method by which Ed-Flex authority could support education reform in a state is through the provision of technical assistance by SEAs to waiver applicants. Such technical assistance from the SEAs could emphasize local innovation within a broad vision of reform throughout the state. In addition, some EFD states reported plans to intervene and provide technical assistance to districts or schools that are not making adequate progress in raising student achievement. Through such interventions, SEAs could emphasize that results-based accountability, and not compliance with federal requirements or service provision, is the "new" standard for ascertaining progress made by districts and schools.

Although many of the EFD state reports indicated that SEA officials met or conferred with district and school staff several times a year, the reports did not provide specific examples or other information about the technical assistance they provided. Therefore, we have no way of knowing its frequency nor exactly of what the technical assistance consists. A statement in Vermont's state report, which resembles that found in many reports, suggests that the technical assistance to applicants may have been quite procedural in nature: "Great effort is taken to work with districts to ensure that waivers that are submitted in fact require a waiver and are in substantially approvable form."

EFD states also indicated that the Ed-Flex authority would help their districts and schools better coordinate their state and federal programs. Texas, for example, stated that the Ed-Flex authority contributed to a common emphasis in both state and federal programs on the goal of achieving academic excellence for all students. Colorado, in its Ed-Flex application, suggested that the consolidation of services provided by federal funds would support state reform, and that Ed-Flex would extend support by allowing more schools to implement schoolwide Title I programs and to better integrate the delivery of services funded by other programs. School districts in Maryland were encouraged to consider the use of federal waivers as part of their consolidated application process. Yet no specific evidence is cited in the EFD reports that such increased coordination has promoted standards-based reform. It is simply not clear whether the EFD program contributes or detracts from this coordination based on the information in the EFD reports.

Perhaps the most important question is whether the use of waivers is increasing the number of students who master state standards. In most EFD states, school districts and schools with waivers achieved their specified goals. However, it is very difficult to determine that the waivers caused these improvements. A handful of EFD states did attempt to compare the performance of waiver recipients to non-recipients, including Texas and Vermont (see section V). These EFD state reports suggest that in some cases these gains were higher for waiver recipients than for non-recipients. However, more research is needed to make assertions about the "value-added" effect of waivers, including a longitudinal approach to evaluation and the use of baseline data.

In conclusion, the EFD reports do not provide enough specific information about the effects of increased local control and greater coordination between programs on schools to help answer this question. The extent of support Ed-Flex provides to standards-based reform in the EFD states appears, then, to be related to how well these major federal education programs support standards-based reform. This topic is discussed in greater detail in the conclusion.

V. Good Practices

Although none of the EFD state reports exemplified exemplary practices for tracking and monitoring progress under federal waivers, several state reports modeled good practice in their reports.

Tracking

Maryland consistently used the tabular format recommended to the EFD states by the Department in its guidance to describe the activities and goals to be accomplished with each of its new waivers, and progress toward achieving those goals. The SEA clearly identified the waiver recipient along with the date of approval and school years affected by the waiver; the statutory provisions for which waiver was sought; description of waiver and applicant goals; and progress toward achieving goals. Maryland also stands out because it was one of only three states to provide baseline data for its waiver recipients — by which we mean achievement data from the year before the waivers were put into place. Very vague goals are identified for certain recipients, but in comparison to other state reports, Maryland's efforts were notable. Additionally, the SEA attempted to disaggregate results for certain demographic groups in a few cases. Unfortunately, the SEA failed to discuss discrepancies between established goals and actual achievement in its report.

Kansas also used the recommended format in its report. In several instances these examples were strong, with specific goals identified, such as the goal of an average gain of 3 percentile points for the school on a various state and other tests. However, the specificity of these goals was uneven, with several schools merely indicating that the

goals and evaluation criteria were contained in the school improvement plan. Kansas also failed to provide baseline data.

Illinois stands out for the amount of additional explanatory and contextual information provided about progress made by waiver recipients. Illinois provided the most non-test score data, including percentages of low-income, attendance, mobility, racial/ethnic categories, parental contact, total enrollment. Illinois also compared these data for the waiver recipient to data for the district and state. Unfortunately, the SEA did not provide the same level of detail in connection with its achievement data.

Monitoring Progress

Vermont did a good job of setting up an in-depth investigation of progress made by students in Ed-Flex schools. Although the actual methods used by Vermont for tracking progress were difficult to interpret, the SEA's organization and thoughtful inquiry, including a discussion of next steps, is a useful model for state reporting.

Vermont's report discussed eleven schools in six supervisory unions that had received waivers to operate schoolwide Title I programs. Although some important background information was missing, including the specific goals for these waiver recipients, the report was organized around three key questions:

1. How do students in Ed-Flex schools perform compared to students in other Vermont schools of similar size and demographics?
2. Is the academic performance of students in Ed-Flex schools improving over time?
3. How do students in Ed-Flex schools perform compared to similar Title I targeted assistance schools?

To answer the first question, the SEA compared performance on state assessments of schools with waivers to that of schools without waivers that have similar poverty levels, school sizes, and grade-level ranges. Instead of providing specific test results, the SEA indicated whether the schools with waivers outperformed non-waiver schools using an 85 percent confidence band to ensure statistical significance. Although subtests on state assessment tests were used instead of actual results, the reader does get a sense of the comparative performance of schools. Unfortunately, no definitions or a sense of what constitutes satisfactory or exemplary student performance was provided.

To answer the second question, the SEA provided information on positive gains in state assessment subtests of students in top two and bottom two performance levels. Again, the results are quite difficult to interpret — particularly because "significant growth" is not defined — but the report carefully details where such growth occurred and where it did not. To answer the third question, the performance of schools with waivers was compared to the performance of similar schools that operated targeted assistance programs.

This report also included a careful analysis of results. The SEA indicated several reasons why caution should be used in drawing conclusions from the analysis, including the fact

that many of the schools took a year to plan their schoolwide programs, and thus have been operating with a schoolwide program for only a year. In addition, the SEA detailed next steps based on its finding of mixed student achievement results for schools with schoolwide waivers. The SEA indicated that it would review best practices in the implementation of schoolwide programs, with the assistance of a regional education laboratory. Findings from this review would be incorporated into the state-mandated review of local action plans. In addition, "any school requesting an Ed-Flex waiver from now on will be asked to document how the schoolwide improvement plan they develop will reflect best practices and how their implementation will track progress on the effective use of best practices."

With far more waivers to track than any other EFD state, Texas relied on its accountability system to establish specific goals for all waiver recipients. For waivers of the Title I schoolwide poverty threshold, for example, the individual school must be rated at least "acceptable" in the state accountability system, or demonstrate "continuous improvement," which is defined as progress toward the goal of having 90 percent of all students pass the state assessments in reading and mathematics in five years. The state's accountability system requires that the following groups of students in a school, as well as all students, achieve the achievement gains needed to earn the rating: African-Americans, Hispanics, Whites, and economically advantaged students.

Texas' practice of identifying one goal for all recipients of a particular type of waiver replaces that of having individual waiver recipients devise and report to the state their goals for their waiver. Because much of the unevenness we found in the EFD reports derived from the lack of specificity or measurability of the goals identified by districts or schools receiving waivers, the SEA's leadership in this regard appears likely to ensure better accountability in Texas. However, such a practice is feasible only in a state with a comprehensive accountability system.

In addition, some aspects of Texas' waiver accountability system were especially well-linked to the goals and purposes of the waivers and federal programs affected by those waivers. One prominent feature of the state's accountability system that enhanced waiver accountability is that the state includes progress made by sub-groups of students in its ratings. This ensures that the students most at-risk for academic failure — economically disadvantaged and minority students — must make the specified gains in order for the school to earn at least an acceptable rating. It would also be useful to see whether students with limited-English proficiency are making such gains, but at this time Texas does not use this sub-category of students in its accountability system.

Texas' state accountability system also sets an increasingly higher standard each year for a school to earn a particular rating, which incorporates a continuous improvement function into the rating system. For example, in 1998, 40 percent of all students and all student sub-groups in a school had to pass the TAAS in the key subject areas for the school to earn an acceptable rating. However, in 1999, 45 percent of all students and all student sub-groups had to do the same, and in 2000, 50 percent had to achieve these

goals. Thus, schools and districts with waivers that maintain at least an acceptable rating are making fairly significant gains each year.
Another strength of Texas' waiver accountability system is that it allows low-performing schools to maintain their waivers if specified improvement gains are achieved — thus permitting low-performing schools (i.e., those with a rating lower than "acceptable") to take advantage of the flexibility of the waivers as long as they achieve a certain level of progress each year. However, if such a low-performing school fails to demonstrate continuous improvement as defined by the SEA during the waiver period, then the local school board is held responsible for modifying that school's program so that such gains are achieved in the subsequent year.

Finally, Texas took an important step in recognizing that the differences in types of waiver demand different accountability mechanisms. As mentioned, the accountability for Title I schoolwide waivers focuses on whether the relevant schools have achieved an acceptable rating or demonstrate continuous improvement. However, for the Title I campus eligibility waivers, as well as waivers of the 125 percent rule, all schools in the district must achieve these benchmarks. The SEA reasoned that these waivers redistribute funding from schools with high poverty to schools with lower levels of poverty, and that such changes in funding could affect higher-poverty schools adversely. Combined with the state's use of disaggregated data to rate schools, the standard to which Texas holds waiver recipients appears to ensure a high level of accountability. As the Texas report indicates, "If even one campus did not make the desired gains for one or more of the student groups, the entire district was considered not to have made the desired gains."

Texas' system for holding districts and schools accountable for their performance under waivers is strong. The state analyzed student achievement gains made by waiver recipients by type of waiver and compared these gains to the state average gain on the state assessment. Finally, Texas analyzed changes in the performance gap between the highest performing student groups and other student groups among districts with waivers. Not all of the districts and schools achieved their projected gains nor achieved better results than those without waivers. The performance gap was not closed consistently across all waivers. The SEA discussed these results thoughtfully and noted where more research was needed to determine why some gains were not as significant as others.

One problem with the Texas report was that it focused on only one year of change due to an expansion in the number of students included in the accountability system starting in 1999. (Comparisons in performance with results prior to 1998 are not reliable, according to the SEA, because the system was expanded to include special education and limited English proficiency students.) Furthermore, it appears that the districts and schools being evaluated have been operating under the waivers for only one year. Thus, although some recipients did not achieve the expected gains in student academic performance, the state does not discuss taking action to terminate waivers as a result of these issues. The individual waiver recipient is not held accountable yet — but subsequent state monitoring appears likely to do so.

VI. Conclusion

In this year alone, more waivers were granted to school districts and schools by the twelve EFD state education agencies than were ever granted, from 1994 to 2000, to districts and schools in the 38 non-Ed-Flex states by the U.S. Secretary of Education. It appears that investing states with the authority to grant waivers encourages school districts and schools to take advantage of the increased flexibility.

This report finds that, based on the EFD state reports submitted to the Department for the 1999 calendar year, it is difficult to describe the effects of those waivers on education reform and student achievement. This problem may not simply be the result of poor state reporting practices. Some inconsistencies in the Goals 2000 Act, which authorized the EFD program in 1994, may contribute to a tendency to report on "overall learning results" rather than on the achievement of specific student performance gains. In addition, many EFD states have only recently established accountability systems that meet Title I requirements and are aligned with their own standards. In particular, the development of valid, nondiscriminatory, and reliable state assessments as the foundation for those accountability systems turned out to be more difficult and time-consuming than expected.

Finally, some questions about the "increased accountability" demanded of school districts and schools receiving waivers remain unanswered. A statement on waiver accountability from Colorado's 1996 application for Ed-Flex status illustrates one aspect of the unresolved issues:

> The LEA's waiver will not automatically be revoked if the students in the LEA are not improving. Colorado views waivers not as a reward for good performance, but as a policy tool to support LEAs' efforts to help students achieve. Therefore, in reviewing the LEA's improvement plan, the SEA will analyze the relationship of the waiver to the performance of the students to determine whether the waiver appears to be supporting or blocking the LEA's efforts to raise achievement of students in the covered programs.

What Colorado suggests is that the SEA should not terminate a waiver unless it determined that the waiver, in itself, was failing to *contribute* to increased student achievement. It appears that the SEA is acknowledging that some districts and schools may not make progress under a waiver, and yet it would be unfair or unreasonable to revoke that waiver, as other factors could be contributing to the lack of improvement. This approach suggests that the "effect" of waivers should be analyzed carefully, on a case-by-case basis, and that judgments will be made, including judgments in the absence of concrete evidence — as it is extremely difficult to establish that a program or infusion of resources has supported or blocked a school or district's efforts to raise student achievement, never mind a waiver.

This approach speaks to the difficulty of implementing a results-based accountability system, including Title I and state accountability systems. Title I asks states to determine a measure of adequate yearly progress and use it to rate districts and schools, and states are elaborating on this and other accountability mechanisms, including rewards and sanctions, to drive up student achievement. *Yet it is difficult to know how high to set the* bar — i.e., how much improvement constitutes "adequate" yearly progress — particularly for schools with insufficient resources and historically low student achievement. In the U.S. system of governance, these important decisions are made by each state, not the federal government.

The question of how high to "set the bar" for EFD waiver recipients is also established by each SEA. Yet these states grant waivers of *federal* program requirements, and the federal government is responsible for establishing an equality of opportunity in U.S. education, particularly through the Title I program, which is designed expressly to target funds to schools with the highest number of at-risk students. Although the Ed-Flex waiver authority provides additional local control to school districts and schools that want it, the accountability mechanisms that guide the program ought to ensure that this increased flexibility does not compromise the intent of the Title I legislation.

Is it sufficient, then, to require only that students affected by EFD waivers continue to make academic progress, to meet student achievement targets established by the state? One might argue that it is, particularly because this is the standard incorporated in Title I.[20] However, the EFD program and its successor, the Education Flexibility Partnership Act of 1999, are predicated on the notion that the *increased* flexibility provided should be tied to *increased* accountability.

Based on our analysis of the EFD state reports, and particularly the tracking and accountability practices reported by the SEAs, we suggest several additional reporting practices that states should consider.

- *Identify how statewide waivers are related to the state's education reform goals.* Since statewide waivers generally are offered to any school district or school that wishes to use it, it is reasonable that the state provide a specific rationale for the waiver, such as linking the waiver to the state's improvement plan. Establishing such a connection this will also make the relationship between the Ed-Flex authority and the state plan more obvious, allowing the federal government to draw more detailed conclusions about the role of Ed-Flex in supporting reform.

- *Hold school districts and schools accountable for their use of statewide waivers.* Particularly because statewide waivers are more commonly granted than individual

[20] The "adequate yearly progress" (AYP) determinations defined in Title I are not used to determine Title I allocations. Similarly, although disaggregated data must be *reported publicly* in Title I states, the legislation does not require that the disaggregated student data be used to make decisions about Title I funding. States have this option as they design their accountability systems, but so far, Texas is the only state to use disaggregated data in its accountability ratings.

waivers, states should require specific goals for districts and schools utilizing them, as Texas does, so that these waivers are not granted on a pro forma basis. It may even be reasonable for states using statewide waivers to establish statewide student achievement targets for these waivers. Pre-approval of these waivers should not *prevent states from meeting the requirement to hold districts and schools accountable.*

- *Establish that the intended beneficiaries of federal programs are making academic achievement gains.* In the case of Title I waivers of the minimum poverty threshold for schoolwide programs, states could consider asking schools with waivers to report whether at-risk or low-performing students are making adequate achievement gains, not just to report the average gain for the school. A reasonable standard might be that these at-risk students are doing at least as well as at-risk students in comparable schools that do not use the waiver. This is especially important because these waivers technically permit a school with a fairly low percentage of low-income students (e.g., under 10 percent of students receiving free- or reduced-price lunch in one EFD state) to spend Title I funds on programming that serves all students in the school.

- *Confirm that the specified target areas of federal programs are being addressed.* In the case of Title II waivers of the subject area for professional development, states ought to be asked to provide data related to mathematics and science teaching and learning, as these are the intended target areas for Title II professional development. Results achieved in the additional subject areas could also be provided.

- *Verify that waivers are not having unintended negative effects on students.* Title I targeting waivers, for example, reduce the funding provided to certain Title I schools so that other schools can receive more. States could be required to provide student achievement data for all Title I schools within a district that receive less Title I funding as a result of a waiver or waivers granted to certain schools.

Since all of the EFD states are utilizing their statewide assessment as a measure of student achievement, they have the data available to analyze student achievement results better. They could compare academic performance between waiver recipients, and between schools operating with and without waivers, and could disaggregate data by student sub-group. However, it is not insignificant that the state using the most commendable reporting practices, Texas, has had a comprehensive statewide accountability system in place for some time. States that seek to better understand the effects of waivers on their districts and schools may need to devote more time and resources to both their accountability and monitoring practices.

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Appendix

Table IV, entitled *Components of Accountability Reports by EFD State and Waiver Type*, describes the presence or absence of desirable components in the EFD state reports by type of waiver. The waivers described in these reports were said to be in place for at least two years. Information gathered for this table is summarized in section III of the report.